

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant | : | Scott C. Harris | Group Art Unit 2876 |
| Appl. No. | : | 10/714,097 | |
| Filed | : | November 14, 2003 | |
| For | : | BARCODE DATA ENTRY DEVICE | |
| Examiner | : | D. I. Walsh | |

Applicant's Brief on Appeal

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant herewith refiles this appeal brief, responsive to the notice of non-compliance dated September 1, 2006. The original appeal brief was filed under 37 CFR 41.37, thereby perfecting the notice of appeal which was originally filed on June 21, 2006. No extension fees are necessary, since this refiled appeal brief is being filed within one month of the notice of nonresponsiveness.

This new appeal brief includes:

Statutes listed in the "grounds of rejection to be reviewed on appeal" Section.

New headings added to the Arguments section

Subsections for each separate claim for the "arguments" Section.

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Sections have been added to the "Arguments" section, corresponding to each section in the "Grounds " section.

The "Claims Appendix" has been revised to remove withdrawn claims, and to remove status identifiers.

The sections required by 37 CFR 41.37 follow:

Real Party In Interest

The inventor, Scott C. Harris, is the real party in interest.

Related appeals and interferences

There are no known appeals and/or interferences

Status of claims

Claims 18, 19, 28-31, and 38-41 are being appealed in this case. Claims 1 and 7-16 are withdrawn. Claims 2-6 and 17 have previously been canceled. Claims 20-27 have previously been canceled. Claims 32-37 are withdrawn. Claims 42, 43 are canceled. Claims 44-47 are withdrawn.

Status of amendments

An amendment after final was filed on June 21, 2006 in order to cancel claims 21-23 and 42, and thereby obviate the rejections to those claims.

Summary Of Claimed Subject Matter

Claim 18 defines forming a communication, see page 8 lines 6-7.

Claim 18 further defines obtaining an image of a barcode that is associated with an advertisement. Page 4 line 2 describes that the input device can obtain an image of the barcode. Page 5 lines 10-13 explain that this allows the digital camera device to become a barcode scanner. The embodiment of figure 4, described page 8 lines 4-14 describes that this barcode can be an advertisement.

Claim 18 describes sending the information from the barcode to a publicly available database, see page 8, lines 21 through page 9 line 2.

The more detailed information is then returned and displayed, see page 9 lines 18-22.

Claim 19 requires forming a communication, see page 8 lines 6-7.

The portable device is used to obtain an image of a barcode associated with an item for sale, see page 18 lines 4-14.

The data is sent to a remote database, see page 8 line 21 through page 9 line 2.

Information that a supplemental is received from the remote database, see page 9 lines and 18-22.

Claim 38 defines using a portable device with a camera to obtain an image of a barcode. See page 8 lines 15-18. Information in the barcode is decoded, see page 8 line 18. The information from the barcode is used to access a web site that is addressed based on the information, see for example page 9 lines 1-2 and lines 11-17.

Grounds Of Rejection To Be Reviewed On Appeal

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The grounds of rejection to be reviewed on appealed are:

Is claim 18 properly rejected under 35 USC 103 as being obvious based on Hudetz?

(Even though claims 19 and 38-40 were not explicitly rejected in the Examiners rejection number 5, it is presumed that these claims are also rejected under 35 USC 103 based on Hudetz.)

Are claims 28-29 and 41 properly rejected under 35 USC 103 as obvious based on Hudetz in view of Paul?

Is claim 30 properly rejected under 35 USC 103 as obvious over Hudetz in view of Paul and Lemelson.

Is claim 31 properly rejected under 35 USC 103 as obvious based on Hudetz in view of Paul and Kaufman.

Are claims 19 and 38 properly rejected under 35 USC 103 as being obvious over Tracy.

Are claims 28-29 and 41 properly rejected under 35 USC 103 as being obvious over Tracy in view of Paul.

Is claim 30 properly rejected under 35 USC 103 as being obvious over Tracy in view of Paul in view of Lemelson.

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Is claim 31 properly under 35 USC 103 as being obvious over Tracy in view of Paul and further in view of Kaufman.

Arguments

35 USC 103 Rejection based on Hudetz

Claims 18, 19 and 38 are rejected based on 35 USC 103 based on Hudetz. This rejection is incorrect, and, with all due respect, ignores certain claim limitations.

Claim 18

Taking claim 18 as initially being representative, it should be noted that claim 18 includes the important limitation that a portable device with a camera and a display is used "to obtain an image of a barcode that is associated with an advertisement". This is not shown by Hudetz, and not obvious from Hudetz. In fact, the rejection admits that this is not shown in Hudetz.

Page 4 of the official action, second paragraph from the bottom, admits that Hudetz is silent that the barcode reader is an imaging device. In fact, Hudetz teaches a conventional barcode reader. It does not teach using a portable device with a camera and a display "to obtain an image of a barcode that is associated with an advertisement".

The rejection alleges that "different types of barcode readers... are well-known and conventional in the art". However, this uses hindsight in the rejection and ignores the specific claim language. The claim requires not just an imaging device, but also

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that the imaging device obtains an image of the barcode. Even if the same devices are used for barcode detection as are used for imaging (CCDs for example), there has been no showing that these devices obtain an image of the barcode.

The paragraph bridging pages 4-5 states that this is well-known and conventional. Applicants respectfully traverse this statement, which is not supported by ANY evidence from the prior art. Prior to the date of this application, nobody ever suggested using a portable device with a camera and a display to obtain an image of a barcode. Barcodes were conventionally imaged by barcode readers. With all due respect, the statement that it is conventional to use different kinds of hardware as barcode readers does not render obvious the specific subject matter of claim 18 which requires using a device that has a camera and the display unit therein to obtain AN IMAGE OF a barcode. Hudetz teaches nothing about obtaining an image of a barcode. This is completely based on hindsight.

Claim 18 defines using a portable device with a camera to obtain an image of a barcode, and decoding information in the barcode. With all due respect, nothing in the cited Hudetz prior art teaches anything about obtaining an image of this type and decoding information from the image of the barcode. The rejection is based wholly on hindsight, since there is no teaching or suggestion of doing this in the Hudetz reference. In fact this much has been acknowledged by the rejection.

Claim 19

Claim 19 includes an analogous limitation of using a portable device with a camera and display therein to obtain an image of a barcode. As described above, this is not taught or suggested by Hudetz.

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Hence, these claims should be allowable over Hudetz along with the claims that depend therefrom.

35 USC 103 rejection based on Tracy

Claims 19 and 38 are alternatively rejected under 35 USC 103 based on Tracy. Again, however, the rejection admits that Tracy is "silent to a camera imaging means for reading barcodes". The rejection alleges that cameras for reading barcodes are well-known and conventional in the art. This contention is respectfully traversed. Each of these well-known items use techniques to detect distances between lines, rather than obtaining AN IMAGE of a barcode, as claimed. In fact, the rejection alleges so-called well-known prior art, but with all due respect, no such prior art exists.

In fact, the prior art has absolutely no teaching or suggestion of using a camera to obtain an image of a barcode and decode that image. The teaching of doing that comes from the present application, not from the prior art. Therefore, and for all of these reasons, it is respectfully suggested that the rejection reads more into the prior art that is actually taught or suggested. Moreover, the mere fact that bar coding scanning and decoding devices use camera based devices -- does not equate to taking images of the barcode. The patent office has simply not established that such devices take images of the barcode, in fact, the patent office has admitted that these devices do not do that. The mere statement that these are well-known in the art cannot be taken as prior art. With all due respect, the patent office has failed to meet their burden of providing a prima facie showing of unpatentability.

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Are claims 28-29 and 41 properly rejected under 35 USC 103 as obvious based on Hudetz in view of Paul?

These claims depend directly and/or indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative to Hudetz noted above. Therefore, these claims should be allowable for these same reasons.

Is claim 30 properly rejected under 35 USC 103 as obvious over Hudetz in view of Paul and Lemelson.

This claim depends indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative to Hudetz noted above. Therefore, this claim should be allowable for these same reasons.

Is claim 31 properly rejected under 35 USC 103 as obvious based on Hudetz in view of Paul and Kaufman.

This claim depends indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative to Hudetz noted above. Therefore, this claim should be allowable for these same reasons.

Are claims 28-29 and 41 properly rejected under 35 USC 103 as being obvious over Tracy in view of Paul.

These claims depend directly and/or indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative

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to Tracy noted above. Therefore, these claims should be allowable for these same reasons.

Is claim 30 properly rejected under 35 USC 103 as being obvious over Tracy in view of Paul in view of Lemelson.

This claim depends indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative to Tracy noted above. Therefore, this claim should be allowable for these same reasons.

Is claim 31 properly under 35 USC 103 as being obvious over Tracy in view of Paul and further in view of Kaufman.

This claim depends indirectly from claim 18, and hence should be allowable for reasons stated above with respect to the rejection of claim 18 relative to Tracy noted above. Therefore, this claim should be allowable for these same reasons.

For all of these reasons, the rejection does not meet the patent office's burden of providing a prima facie showing of unpatentability, and should hence all these rejections should be reversed.

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Respectfully submitted,

Date: _September 12, 2006

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Claims appendix

18. A method of forming a communication, comprising:

Using a portable device with a camera and a display unit therein, to obtain an image of a bar code that is associated with an advertisement;

sending information indicative of the bar code to a remote database; and

receiving and displaying, on said portable device, more information about said advertisement from said remote database.

19. A method of forming a communication, comprising:

Using a portable device with a camera and a display unit therein, to obtain an image of a bar code that is associated with an item for sale;

sending information indicative of the bar code to a remote database; and

receiving and displaying, on said portable device, information that is supplemental to said item for sale, which information is received from said remote database.

28. A method as in claim 18, wherein said bar code is a dual type bar code, with a first part that is interpreted by a first bar code scanning process to obtain first information and a second part which is interpreted by a second bar code scanning process to obtain second information that has more information than first information.

29. A method as in claim 28, wherein said first part is a linear bar code and said second part is a non-linear bar code.

30. A method as in claim 28, wherein said first process is a scan in a first direction and said second process is a scan in a second direction.

31. A method as in claim 28, wherein said second part is one of grayscale or color of the bar code.

38. A method comprising:
using a portable device which includes a camera therein to obtain an image of a bar code;
decoding information in the bar code to obtain information from the bar code;
and
using said information to access a web site from said portable device, that is addressed based on said information.

39. A method as in claim 38, wherein said bar code is a two-dimensional bar code.

40. A method as in claim 38, wherein said bar code is a three-dimensional bar code.

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41. A method as in claim 38, wherein said bar code includes different parts which include different information, one of said parts including said information to access the web site.

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Evidence appendix

None

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Related proceedings appendix

None